



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

[Docket Number USCG-2021-0225]

RIN 1625-AA00

### Safety Zone, PNSY Entrance Structure Heavy Lift Project - Piscataqua River, Portsmouth, NH

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone for certain waters in the Piscataqua River, Portsmouth, NH. This action is necessary to provide for the safety of persons, property, and the marine environment from the potential safety hazards associated with the construction and heavy lift operations at the Portsmouth Naval Shipyard Dry Dock No. 1. When enforced, this rule will prohibit persons and vessels from entering into the safety zone unless authorized by the Captain of the Port Northern New England or a designated representative.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], through August 31, 2021. For the purposes of enforcement, actual notice will be used from June 16, 2021, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0225 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT Shaun Doyle, Sector Northern New England Waterways Management Division, U.S. Coast Guard; telephone 207-347-5015, e-mail [Shaun.T.Doyle@uscg.mil](mailto:Shaun.T.Doyle@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NAD 83	North American Datum of 1983
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
COTP	Captain of the Port Sector Northern New England

### **II. Background Information and Regulatory History**

On April 6, 2021, a construction company contracted by Portsmouth Naval Shipyard (PNSY) notified the Coast Guard that in mid-May they intend to tow the Weeks 2701 barge with the new PNSY Dry Dock No.1 Superflood Basin entrance structure, commonly referred to as the “structure,” aboard to PNSY for final lifting and setting. The structure is a 5500 ton pre-fabricated concrete caisson. The construction is critical to the PNSY Superflood Basin project. The lift and placement of the structure will take approximately two tide cycles and requires no wake or swell from passing vessels or weather during critical and sensitive lifting operations. The heavy lift is critical to the success of the PNSY Superflood Basin project and the future of PNSY operations. The heavy lift will be north of the federal navigation channel in the area of PNSY Berth No. 1.

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause

finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impracticable. A delay or cancellation of the currently ongoing PNSY Superflood Basin project in order to accommodate a full notice and comment period would delay necessary operations, result in increased costs, and delay the date when the PNSY Superflood Basin is expected to open for critical naval operations. For these reasons, the Coast Guard finds it impracticable to delay this regulation for purposes of a comment period.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable for the same reasons specified above.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Sector Northern New England (COTP) has determined that potential hazards associated with the heavy lift will be a safety concern for anyone transiting the Piscataqua River in the vicinity of the PNSY Berth 1. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while during the heavy lift.

### **IV. Discussion of the Rule**

This rule establishes a temporary safety zone from June 16, 2021, through August 31, 2021. The safety zone will cover all navigable waters within 350 yards of position 43°04’50.38”N, 070°44’39.62”W (NAD83) of the Piscataqua River, Portsmouth, NH, in the vicinity of PNSY Berth No. 1. The size and duration of this safety zone is intended to

ensure the safety of waterway users on these navigable waters during heavy lift operations.

We anticipate enforcing the safety zone during the heavy lift operations for installation of the structure during three high tide cycles sometime from July 1, 2021, through July 4, 2021. No vessel may enter, transit through, anchor in, or remain in the zone during periods of enforcement enforcement unless permission is obtained from the COTP or a designated representative. Persons or vessels seeking to enter the safety zones must request permission from the COTP or a designated representative on VHF-FM channel 16. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate. The Coast Guard is publishing this rule to be effective through August 31, 2021 in case the project is delayed due to unforeseen circumstances.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the following reasons: 1) The

safety zone only impacts a small designated area of the Piscataqua River, Portsmouth, NH, 2) the zone will only be enforced during actual lift operations, 3) persons or vessels desiring to enter the safety zone may do so with permission from the COTP or a designated representative.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this rule under Department of Homeland Security Directive

023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting approximately 24 to 36 hours that will prohibit entry within 350 yards of position 43°04'50.38"N, 070°44'39.62"W (NAD83), Piscataqua River, Portsmouth, NH, during heavy lift operations in Berth No. 1 at PNSY. It is categorically excluded from further review under paragraph L60a of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

2. Add § 165.T01-0225 to read as follows:

**§ 165.T01-0225 Safety Zone; Safety Zone, PNSY Entrance Structure Heavy Lift Project - Piscataqua River, Portsmouth, NH.**

(a) *Location.* The following area is a safety zone: All navigable waters within a 350-yards radius of position 43°04'50.38"N, 070°44'39.62"W (NAD83) on Piscataqua River, Portsmouth, NH.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the COTP Northern New England in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF-FM channel 16 or (207)767-0303 (Sector Northern New England Command Center). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period[s].* This section will be enforced June 16 , 2021, through August 31, 2021, during active heavy lift operations and other instances which may cause a hazard to navigation, as well as when deemed necessary by the COTP, Sector Northern New England.

Dated: June 11, 2021

B. J. LeFebvre  
Captain, U.S. Coast Guard  
Captain of the Port  
Sector Northern New England

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